SINGAPORE REPORTS

ATTORNEY-GENERAL v. RADA BASKARAN

[C.A. (Chua, Winslow and Tan Ah Tah JJ.) June 29, 1972]

[Singapore — Civil Appeal No. 35 of 1971]

Negligence — Motor accident — Appeal against finding of liability.

Damages — Appeal against quantum — Acceptable multiplier.

This was an appeal against the decision of the High Court which had awarded the sum of $91,392, representing 70% of an assessed quantum of $130,560 in damages on a total liability basis, in favour of the widow and other dependants of the deceased.

The deceased's death was found to be caused by the combined negligence of the driver of a Government refuse lorry, as well as his own, in a motor accident. The deceased was 34 years of age and the High Court adopted a multiplier of 15 in assessing damages. The Attorney-General appealed. The respondent/plaintiff cross-appealed on the ground that the learned trial judge was wrong in law and in fact in adopting a multiplier of 15 years instead of something nearer 22.

Held, dismissing the appeal and cross-appeal: (1) the lorry driver was correctly found to be negligent to the extent of 70% of the total damages, and the deceased was contributorily negligent to the extent of 30% of the total damages;

(2) the multiplier of 15 adopted by the High Court was acceptable in the circumstances of this case.

COURT OF APPEAL.

Warren Khoo (State Counsel) for the Attorney-General.

H. E. Cashin for the respondent

Cur. Adv. Vult.

Winslow J. (delivering judgment of the court): This is an appeal against the decision of the High Court wherein the trial judge on 11th September, 1971 delivered judgment in the sum of $91,392, which represents 70% of an assessed quantum of $130,560 in damages on a total liability basis, in favour of the plaintiff widow and other dependants of one, Dr. Govindarajulu Naidu Baskaran, deceased. His death was found to be caused by the combined negligence of the driver of a Government refuse lorry as well as his own, in the proportions indicated, as he was driving his motor car along Farrer Road in the direction of Holland Circus at about 9.20 a.m. on 27th May 1969.

The trial judge found that the negligence of the lorry driver lay in his failure to "look behind him or into his rear view mirror and to assure himself that there was no traffic approaching from behind him" when he commenced to move his lorry out to the right from its stationary position on the left hand side of the left hand carriage way as one looks towards Holland Circus of Farrer Road, which is a dual carriage way.

He also found that the lorry went across the road right up to 5 or 6 feet from the central road divider separating the two carriage ways before it straightened out and then swerved a little to the left and that a part of his lorry clearly encroached upon the path of the car driven by the deceased.

An emergency having been unexpectedly created by the lorry driver the deceased reacted, in the agony of the moment, by braking hard and swerving to his right violently, thereby losing control of his car, soon after the application of his brakes. As a result, the car ran full tilt into the kerb of the road divider, overturned, and landed on its offside right up against the central road divider, pinning the doctor underneath and facing the direction from which it had come with its wheels in the air.

There was only one eye-witness of the accident, according to the trial judge, on whom he could place reliance.

This was one Neo Eng Watt, a clerk in the employment of Ford Motor Company, Bukit Timah Road. The deceased was the company's doctor and, on the morning in question at about 9.00 a.m., he picked up Neo Eng Watt at the company's office in Bukit Timah in order to take him to his clinic in Commonwealth Crescent for a full check-up. Neo sat next to him in the front seat as the doctor drove his motor car to the junction of Farrer Road where the car turned right into Farrer Road and proceeded in the direction of Holland Circus.

The left hand carriage way towards Holland Circus is 33 feet 5 ins. wide and undulates from time to time until one reaches the last crest or hump some 618 feet away from the circus towards which there is a downward slope. From the crest of the road to a small tree, against which the car finally came to rest, after it had been turned over from its offside during rescue operations, is a distance of about 400 feet leaving a distance of 218 feet from that small tree to the circus itself.

There were conflicting versions as to the cause of the accident. The plaintiff on the one hand blamed Tan Kim Nee, D.W.2, the driver of the lorry, for his negligence in causing the death of her husband while the defence was that the deceased brought about his death by his own rash driving. The trial judge accordingly found it necessary to examine in some detail the evidence tendered in support of these two versions.

Neo Eng Watt, P.W.2, gave evidence that the deceased was driving at 40 miles per hour along Farrer Road and that as they reached the crest there was no moving traffic ahead of them. He said that he saw a lorry parked on the left hand side of the road about 300 feet ahead of him. He also said that when the deceased's car was about 40 feet from the lorry it moved out into the middle of the road and came across the car's path, whereupon the deceased applied his brakes and swerved to the right. He also said that when the lorry pulled out from the side of the road it went across the road up to a spot about 5 or 6 feet from the central road divider. He said that he was taken by surprise when the lorry suddenly pulled out. The deceased's car was then travelling 6 to 7 feet from the central road divider. The commencement of the right hand brakemark made by the car shows that it was 8 feet 5 ins. from the divider. Neo was firmly of the view that if the deceased had not braked, his car would have run into the back of the lorry and he also said that there was a very slight chance of the car's going through the gap between the lorry and the central road divider.

Counsel for the appellant contended that the evidence of Neo should have been rejected by the trial

judge. He submitted that Neo was an unreliable witness who had given contradictory evidence before the coroner.

In particular, he was cross-examined on his statement to the coroner on 20th February, 1970 where he said that when he first saw the lorry it was moving out from the near side of the road whereas he told the court that when he first saw the lorry it was stationary. His reply was that, when he came down the slope, the lorry was moving out. On further questioning, he explained, at the end of his cross-examination, that when he first saw the lorry it was at the side of the road and that it was not moving but, if it was, it was moving so slightly that it was unnoticeable.

There was another matter with regard to which, according to counsel for the appellant, Neo contradicted himself as between what he told the court and what he had said before to the coroner. This was in relation to what he said to the court about the lorry crossing the road to a spot 5 or 6 feet from the central road divider. He was taxed with having told the coroner that the gap was such that the car would have gone through between the lorry and the divider. He agreed saying that but added that what he was then telling the trial judge was true, *i.e.* that the gap was about the width of a car, that is, 5 or 6 feet and when he was asked whether his car could have gone through, his reply was that he would not attempt to do so as it would be quite dangerous to make that attempt at 40 miles an hour. He denied that the gap was much more than 5 or 6 feet. He had in fact said earlier in his examination-in-chief before the trial judge that there was "very slight chance of the car going through the gap".

The trial judge weighed the evidence of Neo in the light of the evidence of the lorry driver, D.W.2, and his witnesses and came to the conclusion that Neo's evidence should be accepted that the lorry went right out to 5 or 6 feet from the central road divider.

Before so deciding, he considered the submission of counsel for the appellant/defendant to the effect that Neo's evidence should be rejected because it went completely against the effect of his evidence before the coroner where he had stated that the lorry pulled out to the middle of the road and that there was sufficient space for the car to go through by the right hand side of the lorry. The trial judge said that the lorry driver, in his evidence, claimed that his lorry kept 11 or 12 feet away from the central road divider, and held that, if this evidence was to be believed, there was no reason for the deceased to swerve violently to his right. He found that as the car was only 4 feet 9 ins. wide it could quite easily have gone through the gap of 11 or 12 feet. He came to the conclusion that there was no contradiction between Neo's evidence at the trial and his evidence before the coroner in view of the fact that at the trial Neo quite candidly said that he would not have attempted to go through the space between the lorry and the road divider as it would have been quite dangerous to attempt to do so at 40 miles per hour. In this conclusion, we cannot say that he was wrong and we are of the view that his acceptance of Neo's evidence on this aspect of the matter in preference to the lorry driver's evidence was justified.

There were two other crucial questions which had to be answered before liability for the accident could be fixed:—

(1) What was the speed of the deceased's car as it came over the crest and down the slope towards Holland Circus? and

(2) How far behind the lorry was the deceased's car when the lorry started to move out?

All the evidence that Neo gave was not accepted in full and that in itself shows that Neo's evidence was weighed with care by the trial judge against the whole of the evidence in this case.

First, he did not accept Neo's evidence that, for example, the speed of the car immediately before the accident was a little less than 40 miles per hour. He considered that this estimate was a little on the low side.

Secondly, he did not accept Neo's evidence that the lorry was only 40 feet away from Neo when it first commenced to cut across the path of the deceased's car.

The only one who could have given any evidence as to the speed of the deceased's car was Neo himself. The defence witnesses all had the car behind them and none of them saw it or the speed at which it was coming down the slope. There was, of course, the evidence of tyremarks on the road which were made by the car but, for reasons submitted by counsel for the plaintiff/respondent, which were accepted, no one can really place any reliance on them as indicating the speed at which the deceased was travelling immediately before the accident. We shall be referring later to these tyremarks.

The submission by counsel for the appellant/defendant that the deceased must have had his foot firmly on the brake pedal, even if the car went out of control, and that the brakes were operating on all 4 wheels to produce the so-called brake marks (PQ and RS) was correctly rejected on the ground that this assertion was pure conjecture unsupported by any evidence, if not contradicted by the expert called by the appellant/defendant who agreed that TQ and VS believed originally to be part of brake marks PQ and RS were in fact not brake marks but tyre marks made by the rear wheels as the car went out of control and skidded.

The submission that the deceased on any reasonable estimation, must have been going at easily 60 miles an hour again was not supported by the evidence and was, once again, contradicted by the expert's views on TQ and VS.

Having found that the suggestion of the defence that the speed was easily 60 miles an hour was pure guess work and without any basis whatsoever, the trial judge proceeded to make his own estimate of the speed from Neo's evidence and the circumstances surrounding the accident as a whole.

He was of the opinion that the car was travelling at a speed which was between 40 and 50 miles an hour

immediately before the accident. As we have already said, the trial judge thought that Neo's estimate of its being a little less than 40 miles per hour was an underestimate but, at the same time, the trial judge did not think that the speed could have been grossly in excess of 40 miles an hour. He also took into account the momentum of the car which caused the car to overturn on its abrupt impact with the road divider, and accordingly reached his final conclusion that the car's speed must have been between 40 to 50 m.p.h.

Counsel for the plaintiff/respondent, of course, submitted that there was no basis for this finding, which he submitted was also pure guess work or conjecture when he argued in support of her cross-appeal on the ground that there was no contributory negligence on the part of the deceased at all and that she should have been awarded damages on the basis of total liability.

With regard to the speed of the car, the trial judge formed the view that a reasonably careful driver approaching this crest from the Bukit Timah side should have reduced speed from 40 miles per hour to something as low as 25 to 30 miles an hour in order to be able to take emergency measures, if necessary, on reaching the top of the crest because, as he said, before reaching the crest, one cannot see any part of the road ahead.

If the deceased had so reduced his speed the judge thought that there would have been no such accident or, at least, not one with such a tragic result. He went on to say that the car overturned because of its high momentum being checked by the firm application of its brakes, the violent change in its direction and its impact with the divider. He also went on to say that if the velocity of the car had been lower there would have been much less likelihood of its overturning.

He accordingly found that the deceased drove his car rashly when he approached the hump or crest at 40 to 50 miles an hour and failed to slow down when he could not see traffic beyond the hump and was therefore clearly negligent. It was for this reason that he assessed liability on the part of the deceased at 30% of the total damages.

One should also bear in mind that he did not accept Neo's evidence that the car was only 40 feet from the lorry as it commenced moving out into the road because it was obviously wrong and counsel for the plaintiff/respondent conceded this. In passing, it seems to us, however, that it is difficult to avoid considering the answers to the two questions together.

None of the other witnesses had been of any assistance to the trial judge in ascertaining the distance between the deceased's car and the lorry when it started to move out. He also found it difficult to believe that the lorry driver, D.W.2, when he started to move out, looked into his rear view mirror and did not see any traffic coming from behind towards his lorry. As the visibility via the rear view mirror extended right up to the crest of the road, the deceased's car, according to the lorry driver, had not yet come over the crest which was well over 400 feet behind him. The only witness who could have spoken as to how far away the car was from the lorry, at the time when it started to move out, was Neo, the passenger in the deceased's car. His estimate of 40 feet was obviously erroneous and the judge realised that it would be clearly wrong on his part to conjecture what it was. What the trial judge therefore really found was that on the evidence "the distance was sufficiently short for the deceased and Neo Eng Watt to be taken by surprise and to find themselves in an emergency. The reaction of the deceased in braking hard and swerving to his right violently speaks for itself of the suddenness of the emergency."

He also found that the driver of the lorry was not aware of the approach of the car from behind him until he heard a loud bang. He found that the reason why the lorry driver was not aware of the car's approaching him from behind was because he did not look into his rear view mirror when he commenced to move out into the road from his stationary position. If he had done so, he would most certainly have seen the deceased's car approaching him from behind.

Even on the expert's evidence of the time it took for the lorry driver to complete his whole manoeuvre at slow speed *i.e.* 9 to 10 seconds, the lorry driver could not possibly have missed seeing the car's approach from behind if he had been keeping a proper look-out for vehicles coming from his rear. The lorry driver obviously took too wide a turn to his right without looking behind or into his rear view mirror before he heard the bang, which caused him to swerve to his left.

In our view the trial judge was justified in reaching these conclusions on the evidence available.

To return to the question of speed, we would add the following further observations in view of the cross-appeal

Neo said that the car was ascending the hump at about 40 m.p.h. and that the doctor slowed down after going over the hump. When he was asked by how much he slowed down he said he couldn't say but that it was not very noticeable. He said that he noticed the difference in the speed of the car. He was not however looking at the speedometer and both before the coroner and at the trial he did at one stage say that the doctor's speed down the slope was about 40 m.p.h.

Therefore, whereas on the one hand, counsel for the appellant/defendant said that the speed must have been easily 60 m.p.h. counsel for the plaintiff contended that Neo was right and that the speed of the car was 40 m.p.h. up the slope and slightly less than 40 m.p.h. as it went down the slope.

Neo said that he had been driving cars for over 20 years but had stopped driving cars 10 years before the trial. When he was asked whether he had ever driven over this particular crest in Farrer Road, his answer was that this road had not yet been made by the time he stopped driving. When asked what he would do if he were approaching a hump he said he would slow down because he would not know what was on the other side of the hump and then, when he was asked whether the doctor slowed down, he answered in the affirmative. It should be remembered

that Neo never said that he was looking at the speedometer and that, when he was asked what made him think the car slowed down after reaching the crest, his answer was that he noticed the difference in the speed of the car. Undoubtedly a person driving up a slope would have his foot down on the accelerator pedal to maintain a speed of 40 m.p.h. on top gear, but, in the absence of evidence that he was looking at the speedometer, Neo could only have noticed the difference from his own observations as a motorist or from some other factor such as the fact that the driver might have eased his pressure and applied his brakes or both.

A car going down a slope would tend to increase its speed without any human agency unless its brakes are applied, however slightly.

There is no evidence from Neo either that brakes were applied at the top of the hill or that pressure on the accelerator was being eased. Nevertheless he said that he noticed the difference even though the difference was not very noticeable.

The motoring expert called by the defence, Mr. Armstrong, D.W.11, agreed with counsel for the plaintiff that the tyre marks PQ and RS shown on the plan were 59 feet 3 ins. and 54 feet 5 ins. long respectively and that the tyre marks TU and VW which were 37 feet and 28 feet 9 ins. long respectively shown as running out more sharply to the right than TQ and VS were in fact brake marks made by the front wheels of the motor car. He also agreed that if these marks TU and VW, shown in the sketch plan as running off to the right and ending up against the road divider, were made by the front tyres, then the tyre marks TQ and VS could not have been made by the front wheels. It follows that TQ and VS were made by the rear wheels as the car went out of control.

The evidence accepted by the trial judge was clearly to the effect that the marks made by the rear wheels, that is TQ and VS, were not brake marks and therefore did not help the defence at all insofar as they relied on the length of the tyre marks PQ and RS, as being brake marks showing the high speed of the car. That is why the trial judge said that it would be completely misleading to place any reliance on the tyre marks by themselves as giving any true indication of speed.

If PQ and RS had in fact been continuous brake marks made by the wheels of the car then of course there would have been ground for saying that the car must have been going at a speed considerably in excess of 40 miles an hour and nearer to what counsel for the defence submitted, namely, 60 miles an hour.

All we now have are brake marks made by the front wheels TU and VW, 37 feet and 28 feet 9 ins. long respectively, leading up to the road divider. In his examination-in-chief, Mr. Armstrong, did say that there must have been sufficient momentum left for the car to overturn after leaving a brake mark of 59 feet. That is what he said when he thought PQ was a brake mark in its entirety. In cross-examination he, however, agreed that it could not be a brake mark all the way. All he could say was that TU and VW, having the measurements we have already stated, were brake marks but not TQ and VS which were in fact skid marks made by the rear wheels as the car went out of control.

It seems to us, therefore, that there was material on which the trial judge could justifiably conclude that the speed of the car was between 40 m.p.h. and 50 m.p.h. and that this was not entirely conjecture on his part as 60 m.p.h. was pure conjecture on the part of counsel for the defence based as it was on PQ and RS. It should also be remembered that Mr. Armstrong said that the momentum of the car was sufficient to cause it to overturn after leaving what he thought was a brake mark 59 feet long. If the road divider had not abruptly checked the progress of the car, with its tragic consequences, the brake marks TU and VW may well have been longer than 37 feet and 28 feet 9 ins. respectively though no one can say how much longer they would have been. It should also be remembered that the momentum of the car was checked not only by the divider but also by the earlier application of the brakes and the violent swerve to the right.

That concludes what we have to say on the question of liability. There can be little doubt that the lorry driver was correctly found to be negligent to the extent of 70% of the total damages and that the deceased also contributed to the disaster, which unfortunately overtook him, to the extent of 30% of the total damages. If there had been more precise information as to the exact excess of the car's speed over 40 m.p.h. the blame attributable to the deceased could have been more.

It only remains for us to consider the other ground of cross-appeal, namely, that the trial judge was wrong in law and in fact in adopting a multiplier of 15 years instead of something nearer 22 which counsel for the plaintiff suggested was the proper multiplier.

A number of cases were cited on the multiplier applicable in cases such as this of a deceased aged about 34 years as Dr. Baskaran was when he died. The range varied from a multiplier of 7 years to a multiplier of 22 years. We have considered all the circumstances including the factors taken into account by the trial judge in assessing damages such as the uncertainty of the deceased's future, his earning potential in the light of the comparatively low level of his earnings even after six years' experience, the possibility of the widow's remarrying in view of her youth, attractive appearance and social position, the higher income tax rates payable on wages as earnings increase beyond $35,000 *per annum* and the other usual contingencies and possibilities falling within the realm of imponderables. We cannot say that the multiplier adopted by him of 15 years was unreasonable or that it did not reflect the appropriate basis of assessing financial loss to the dependants.

Both the appeal and the cross-appeal are accordingly dismissed.

Appeal and Cross-appeal dismissed.

Solicitors: *Murphy & Dunbar.*